TESTIMONY OF
PAUL MACGREGOR
AT-SEA PROCESSORS ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON OCEANS AND FISHERIES
COMMITTEE ON COMMERCE SCIENCE & TRANSPORATION

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Thank you, Madam Chairwoman and Members of the Oceans and Fisheries Subcommittee for the opportunity to testify on S. 1221, the American Fisheries Act. I am Paul MacGregor, Executive Director of the At-sea Processors Association (APA).

APA represents companies that operate twenty-four U.S.-flag at-sea fish processing vessels. APA's catcher/processors, or factory trawlers, are principally engaged in the Bering Sea pollock fishery and the West Coast Pacific whiting fishery. Over 90 percent of the fleet's revenues are derived from those two fisheries. Both of these fisheries are primarily conducted with mid-water trawl gear and are widely recognized as two of the cleanest fisheries in the world. To a much lesser degree, some APA member vessels also participate in one or more other Bering Sea groundfish fisheries.

The fleet contributes substantially to the Pacific Northwest and Alaska fisheries and maritime economies. The at-sea pollock processing fleet employs nearly 4,000 workers. Two-thirds of the workers reside in Washington State. Alaska, Oregon and California residents are also strongly represented in the workforce. Since 1991, APA member companies have conducted intensive recruiting and training programs in Western Alaska and now employ several hundred residents of remote coastal villages as part of their regular work force. The good, well paying jobs offered on our vessels are one of the reasons why at-sea processing vessels were chosen as partners by each of the Community Development Quota (CDQ) programs in Western Alaska. (See Attachment 1-a.). Two of

those CDQ groups have invested in at-sea processing vessels or in the companies that operate such vessels.

The catcher/processor fleet is composed of U.S.-flag vessels operated by American corporations. By law, 75 percent of the crewmembers on board U.S.flag fishing and fish processing vessels must be American citizens or qualified U.S. residents. In the context of this hearing, it is important to note that no similar provision in law applies to onshore processors. Bering Sea onshore pollock processors reportedly employ a high percentage of foreign guest workers. (See Attachment 1-b, 1-c and 1-d.)

From a marketing standpoint, U.S.-flag catcher/processors produce an array of products. These include large quantities of pollock fillets for domestic consumers as well as *surimi* for both export and domestic markets. Onshore and mothership processors concentrate much more heavily on *surimi* production.

Background.

Due to a lack of U.S. groundfish harvesting and processing capacity the enormous North Pacific groundfish fishery continued to be dominated by foreign flag fishing and fish processing vessels even after the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was passed in 1976, and U.S. fisheries jurisdiction was extended out to 200 miles. It proved to be a formidable challenge for American fishermen to develop groundfish processing technology, gain access to foreign markets, and develop new products for American consumers. The catcher/processor fleet was developed in the mid to late 1980s because other opportunities for fishermen to participate in the pollock fishery were few and far between. (Onshore pollock processing

capacity in the Bering Sea region was extremely limited until 1991, when two large Japanese companies, Nippon Suisan and Maruha, opened high capacity onshore plants in Dutch Harbor.) The decision by American fishermen to build catcher/processors brought about a faster than expected phase out of foreign-flag processing ships from the U.S. 200-mile Exclusive Economic Zone (EEZ).

While many factory trawlers were built, or rebuilt, in the U.S., other fishermen bought U.S. vessels for conversion abroad into factory trawlers, especially the more technologically sophisticated pollock *surimi* vessels. Construction costs for *surimi* factory trawlers ranged from $30 to $70 million per vessel. Unlike the U.S., many foreign nations had employed at-sea processing technology for decades, so it was natural for American fishermen to work with overseas shipyards experienced in the construction of such vessels. Until enactment of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Anti-Reflagging Act) in January 1988, there was no bar to rebuilding U.S. vessels abroad for use in our domestic fisheries.

No one disputes the fact that the 23 overseas conversion projects—many of which are pollock catcher/processor vessels—resulted in significant modifications to the affected vessels. However, each rebuild project received a U.S. Coast Guard letter ruling certifying that the reconstruction project complied fully with requirements of U.S. law and regulations. Virtually all of the projects were identified, and project approvals received from the Coast Guard, prior to any congressional action on the Anti-Reflagging Act. In recognition of the investments that American companies had made in foreign conversion projects, Congress authorized such projects to continue, but set forth specific criteria to

which the rebuilt vessels had to adhere in order to qualify for U.S. fisheries endorsements. As stated in a 1990 General Accounting Office report, the law effectively closed the door on additional projects. No new pollock catcher/processors, foreign rebuilt or otherwise, have entered the fishery since 1990. In fact, the current pollock fleet is somewhat smaller than the fleet that operated in 1990.

APA's Position on Elements of S. 1221

1. **APA opposes a phase out of fishing vessels greater than 165 feet in registered length.**
2. **APA supports eliminating the ownership "grandfather" contained in the Anti-Reflagging Act.**
3. **APA opposes revoking fishing privileges for fishing vessels rebuilt abroad if any change of ownership in the vessel occurs.**

1. No Justification Exists for Phasing Out Vessels Longer than 165 Feet.

a. Conservation Issues. The hypothesis advanced in S. 1221—that large fishing vessels are incompatible with sound fisheries conservation and, therefore, should be phased out—is not supported by the facts. Most U.S. fishing vessels longer than 165 feet fish in the North Pacific. A September, 1997 NMFS report on the status of U.S. fish stocks reports found that of the 63 fish species identified in the North Pacific, *none* are over fished. (See Attachment 2) In fact, the biomass of Bering Sea groundfish *alone has increased from 11 million metric tons to 17 million metric tons since 1980.* Contrast that situation with the over-fished East Coast and West Coast groundfish fisheries that are the province of small vessel fleets, and it is clear that improvements in fisheries management

will not result from imposing a federal vessel size limit. Instead, Congress should review the policy directives contained in the 1996 amendments to the Magnuson-Stevens Act to determine if over-fishing is being effectively addressed in those regions and in those fisheries where it is occurring.

There is ample evidence in U.S. and world fisheries that vessels of any size, when not properly regulated, can over--harvest fishery resources. Effective and enforceable fisheries management regimes are essential if conservation goals are to be met. The North Pacific groundfish fishery is an example of perhaps the best managed fishery in the world. It could even be argued that having fewer, larger vessels in that fishery provides conservation benefits because fishery managers are better able to monitor and enforce fisheries regulations.

The keys to effective fisheries management in the North Pacific are:

- **Federal scientists determine the population abundance for each species and establish safe harvest guidelines on an annual basis.**
- **Fishery managers establish a catch limit for each species of groundfish at or below the sustainable level recommended by scientists. When the quota is taken, the fishery shuts down.**
- **All catch, whether retained or discarded, counts against the allowable catch level.**
- **All pollock catcher/processors carry onboard at least one federal fishery observer to monitor and record catch composition and amounts. Smaller vessels have lower levels of observer coverage.**
- **State of the art electronic reporting systems allow fishery managers to monitor catch levels and manage quotas on a real time basis.**

b. <u>Benefits of Large Fishing Vessels.</u> Despite a solid record of sound resource management, overcapitalization remains a root problem in the North Pacific groundfish

fishery. Both the onshore and offshore fishing and fish processing sectors have invested too much capital in an effort to win the so-called race for fish. Both sectors are over-capitalized. However, since catch limits are set at conservative levels and are strictly enforced, overcapitalization is an economic concern in the pollock fishery, not a conservation concern. The findings of S. 1221 allege, without supportable evidence, that overcapitalization in the at-sea sector will lead to pressure on fishery managers to set harvests above sustainable levels. If that was the case, overcapitalization in the shoreside sector and in other fisheries would lead to similar results. However, neither APA, nor any of its member companies, has ever advocated catch levels above the allowable biological catch (ABC) level recommended by the scientists. Instead, we have consistently urged federal fishery managers to end the race for fish and to rationalize the North Pacific fishery. Regrettably, little progress is being made in that regard.

It should also be recognized that vessel length is not necessarily indicative of harvesting capacity. Although U.S.-flag pollock factory trawlers range in length from 220 to 385 feet, catcher vessels half the length of factory trawlers often have comparable fishing power. For example, many factory trawlers and trawl catcher vessels employ similar sized nets. This is borne out by National Marine Fisheries Service (NMFS) data showing that tow sizes, that is the amount of fish harvested from each set of a net, are roughly the same for catchers and catcher/processors in the Bearing Sea.

The purpose and function of a 300-foot long pollock factory trawler is to accommodate onboard processing equipment, crew quarters for 75 to 125 men and women, galley facilities, a cold storage hold, and, of course, fishing equipment. Fishermen

use at-sea processing technology as a means of adding value to their catch. After all, unprocessed pollock is worth only 8 cents a pound; whereas, pollock fillets processed at-sea currently sell for about $1.30/pound. A phase out of large fishing vessels would effectively precludes an option for fishermen to continue to process, and add value to, their own catch in this fishery. They would be relegated instead to delivering their catch to one of a handful of processors and being offered pennies a pound for their fish.

For a more complete description of the Bering Sea resource, the pollock fishery and the products produced by the at-sea processing fleet and the relationship between that fleet and local communities in Western Alaska, please see Attachment #3.

c. <u>Bycatch and waste issues.</u> The findings and rationale of S. 1221 assert that fishing vessels greater than 165 feet in registered length are "less likely than smaller, less powerful vessels to avoid bycatch and waste" in the fishery. Alaska Department of Fish and Game (ADF&G) statistics are cited to show that "fifty-five factory trawlers in the Bering Sea threw overboard 483 million pounds of groundfish, wasted and unused in 1995." No effort is made, however, to correlate the bycatch and discard rates cited with the vessels that are most adversely affected by this bill—the 30 or so larger fillet and *surimi* catcher/processors that primarily target on pollock. In fact, the Bering Sea pollock fishery has been cited by the United Nations Food and Agricultural Organization (FAO) as the cleanest fishery in the world insofar as bycatch and discards are concerned. S. 1221 confuses the bycatch and discard of mid-water trawl pollock vessels with the bycatch of vessels that target on other groundfish species. It is these vessels, many of which are under 165 feet, that are responsible for most the bycatch and discards that occur in the

Bering Sea groundfish fisheries.

A further irony of S. 1221 lies in the fact that it blames wasteful fishing practices on the vessels that have actually been among the most responsible in terms of the fishing practices that they employ, the low bycatch rates that they achieve, their regulatory compliance and their support of progressive management measures in the North Pacific. The bill ignores the one company in the North Pacific that operates a fleet of bottom trawl vessels that has repeatedly ignored fishery manager's and coordinated industry efforts to control bycatch. Although this company seems to consistently conduct its operations without regard to bycatch rates or the effect that irresponsible fishing practices have on more conscientious fishermen, it would escape the more onerous aspects of S. 1221 since it appears to meet the proposed U.S. ownership standard.

d. Safety Issues. Even more important than economic considerations, however, are safety issues. Weather and sea conditions in the Bering Sea can be harsh, particularly in January and February when the pollock fishing season begins. From the standpoint of reducing risk in the fishing profession, large fishing vessels afford a relatively safe working environment. A review of U.S. Coast Guard statistics from the North Pacific indicate that only five lives were lost on factory trawlers larger than 165 feet between 1987-1997. During the same period, 260 lives were lost on fishing vessels less than 165 feet in length. In 1996, the Magnuson-Stevens Act's national standards were revised to promote the safety of life and property at sea. It would be unwise to water down this important change in the law by passing legislation phasing out many of the safest vessels in the North Pacific fisheries.

The issue of regulating sizes of fishing vessels should be left to the regional fishery management councils. The characteristics of individual fisheries vary widely. In certain cases, there might be legitimate conservation, economic or social reasons to impose vessel size limits, but Congress ought not to impose a one-size-fits-all fisheries management rule.

In the North Pacific, the regional fishery management council has instituted a moratorium on new entrants into the North Pacific groundfish fishery. The moratorium will soon be replaced by a license limitation system that the North Pacific Council has already approved. These regulatory initiatives, when considered in conjunction with the fact that no pollock factory trawlers have entered the fishery since 1990 (indeed there are fewer pollock catcher/processors in the North Pacific today than there were in 1990), suggest that there is no need for a statutory prohibition on new large vessels. If circumstances change, it is better to maintain the flexibility for regional decision makers to respond appropriately.

2. <u>Increasing Levels of U.S. Ownership in Fishing Vessels.</u>

APA agrees that the ownership "grandfather" provision provided for in the Anti-Reflagging Act should be eliminated and a scheduled phase in of U.S. ownership of fishing and fish processing vessels, at or above the 51 percent level, should occur. For some companies, a significant restructuring of the stock ownership in the U.S. corporation will be required. Those companies should be granted sufficient time to come into compliance with new ownership requirements. APA also suggests that the following issues be addressed with regard to increasing U.S. ownership in the seafood industry.

a. <u>Equitable Treatment for All Seafood Industry Sectors.</u> Nearly, seventy

percent of the Bering Sea onshore pollock processing capacity is controlled by two Japanese conglomerates, Maruha and Nippon Suisan. Their wholly-owned onshore subsidiaries are Westward Seafoods and Unisea. Maruha also owns a majority interest in Alyeska Seafoods. S. 1221, which requires U.S.-flag at-sea processing vessels to become 75 percent American owned, does not affect the ownership of shoreside plants operated by our principal, Japanese-owned competitors.

This circumstance raises serious public policy concerns. These two multinationals control a substantial portion of the world *surimi* market. Maruha's corporate report boasts that the company already handles 100,000 metric tons of *surimi* annually, one-quarter of the entire Japanese *surimi* market. In addition to fillets for the domestic market, U.S.-flag at-sea pollock processors also produce *surimi* for export to Japan. To better handle the competitive disadvantage of selling into a Japanese market dominated by two vertically integrated Japanese corporations with significant *surimi* production facilities onshore in Alaska, at-sea processing companies were forced to form an export trading company, the U.S. Surimi Commission (USSC). The USSC has helped the non-Japanese-owned at-sea processors maintain what has been a precarious foothold in the Japanese market. Congress should examine closely any actions that would further strengthen Nippon Suisan's and Maruha's dominance over that market.

b. Flexible, Workable U.S. Ownership and Control Standards. As Congress considers requiring an increased level of U.S. citizen ownership and control in the American corporations that operate fishing industry vessels, it should be recognized that many sectors of the seafood industry sell into foreign markets. Some also depend on

foreign banks for financing. Congress should recognize the need for American fishing companies to effectively compete in the international marketplace. Care should be taken not to preclude, or impede, domestic seafood companies from signing long-term sales agreements with foreign buyers or arranging for loans with foreign banks.

c. Protect Interests of U.S. Partners in Fishing Companies. As drafted, S. 1221 poses a potential problem for some American fishing companies that do not currently meet the proposed 75 percent U.S. citizen ownership and control standard. Under the bill, a vessel that does not comply with the 75 percent U.S. ownership and control standard by a date certain would lose its fishery endorsement, rendering the vessel valueless for use in U.S. fisheries. That raises a possibility that foreign partners holding more than a 25 percent ownership interest in vessels might refuse to sell their share to their American partners. Faced with a loss of fishing privileges and a valueless asset, American partners, who might well hold a majority interest in the vessel, could be leveraged into selling their vessel (or buying out their foreign partner) on unfavorable terms. We urge that the bill be redrafted to protect the interests of U.S. citizen owners of catcher/processor vessels.

3. The Foreign Rebuild Provision.

According to the bill's proponents, S. 1221 will result in the revocation of fishing privileges for 18 U.S.-flag catcher/processors, an expropriation of perhaps $500 million in investments and a loss of between 1,500 and 2,000 American jobs. Fifteen of the 18 affected vessels have participated in the Bering Sea pollock fishery since at least 1990.

a. Equity Issues and a Plain Reading of the Law. The Anti-Reflagging Act stated that a *vessel* rebuilt abroad would qualify for a U.S. fisheries endorsement if it met three tests. First, it must have been purchased, or contracted for purchase, before July 28, 1987 with the intent that the vessel be used in the fisheries. Second, the vessel must have been rebuilt in a foreign shipyard under a contract entered into by July 11, 1988. And, third,

the vessel must have been re-delivered from the shipyard before July 28, 1990. S. 1221, introduced a decade after passage of the Anti-Reflagging Act, would revoke the fisheries endorsements of many vessels that met these specific criteria by applying a new standard retroactively. The current bill states that if any change of ownership in the vessel took place during the rebuilding time frame, and if any future change in ownership occurs, then that vessel would immediately lose its fisheries endorsement.

Thus, if the owners of these vessels need to restructure in order to comply with the new U.S. ownership standard in this bill, their vessels' fishing privileges in the U.S. would be forfeited. This provision is grossly inequitable. The only "cure" for an affected vessel owner is to purchase a vessel of equal or greater size that is currently operating in the North Pacific fishery and surrender that vessel's fisheries endorsement. This is not a viable alternative. What bank would finance such an expensive acquisition, only to surrender the asset? Even those who already meet the proposed 75 percent U.S. ownership standard, but whose vessels had an ownership change between 1987 and 1990, are at risk. Any future sale of their vessel would trigger a revocation of its fisheries endorsement. In short, any change of ownership within a corporation would result in a permanent loss of fishing privileges.

The rationale advanced for this tortuous provision is that Congress did not intend that individuals speculate on vessel contracts while Congress deliberated on the Anti-Reflagging Act. Those supporting this provision suggest that vessels, upon which it is now being speculated that speculation occurred, should lose their fishing privileges. However, S. 1221 does not reach these speculators. Those who may have speculated on vessels, or vessel contracts, pocketed their cash 10 years ago. This bill punishes the buyers who stayed the course. Others who are penalized unjustly are those who purchased affected vessels at any time subsequent to the 1987-1990 time period. Furthermore, it eliminates 1,500 to 2,000 jobs held by men and women earning a family wage in the at-sea processing industry.

The D.C. Court of Appeals, in reviewing the ownership "grandfather," ruled in 1992 that a plain reading of the Anti-Reflagging Act language supports the Coast Guard's determination that the ownership and foreign rebuild "grandfathers" run with the vessel, not the vessel owner. Others disagree with the U.S. Coast Guard's interpretation and the

court's ruling, but a decade of discussion has not changed minds on either side of the issue. It is APA's position that the disagreement should not be resolved by arbitrarily removing vessels which have lawfully participated in U.S. fisheries for the last decade.

b. <u>Identifying Allocation Winners and Losers.</u> Four large seafood companies that support this section of the bill (Tyson Foods, Trident Seafoods, Nippon Suisan and Maruha) own or control nearly half of the Bering Sea pollock processing capacity. These are the four companies that will be the winners if Congress enacts this economic reallocation measure. It is indeed ironic that two of the primary beneficiaries of legislation to Americanize the fishery will be Japanese owned companies. If S. 1221 is enacted, the viability of at least four catcher/processor companies is gravely threatened. The four companies account for roughly 35 percent of the Bering Sea pollock harvest. At present, there are only about a dozen companies processing the 2.4 billion annual Bering Sea pollock harvest. This bill would further consolidate the industry, leaving fishermen fewer marketing alternatives and even more dependent on the Japanese-owned shoreside processors.

c. <u>The Overcapitalization Issue.</u> It has been asserted that the participation of the 22 foreign rebuilt factory trawlers was not anticipated, and that those vessels alone are responsible for the overcapitalization extant in the Bering Sea pollock fishery. Here are several facts to consider:

- **No new factory trawlers have entered the Bering Sea pollock fishery since 1990. In that year, the fishing season lasted 207 days.**
- **In 1991, two large Japanese owned processing plants were opened in Dutch Harbor. In that year, the pollock season lasted 148 days.**
- **Since 1991, the factory trawlers total catch and percentage of the catch**

has declined from 65 percent of the pollock to 48 percent in 1996.

- **The catcher vessel sector has continually increased its share of the harvest since 1991. Today it takes approximately 52% of the harvest.**

- **Onshore processors almost doubled production between 1990 and 1992 as Nippon Suisan and Maruha dramatically expanded pollock processing facilities. The quota for the onshore sector lasted almost 160 days in 1992. Subsequent capital investments onshore resulted in a doubling of daily production. In 1997, the onshore fishery lasted just 74 days.**

When the finger pointing stops, the fact remains that the regional council has successfully maintained conservative harvest limits (with the full support of all sectors of the fishing industry.) However, the council has failed to rationalize the fishery. Regional fishery managers can no longer ignore the need to end the race for fish, removing incentives for fishermen and processors to invest even more capital to harvest and process the same amount of fish.

S. 1221, likewise, fails to address the root problem of a race for fish and the resulting overcapitalization. The bill simply limits the number of participants in the race, which would result in further consolidation in the industry, particularly the processing sector.

That concludes my testimony, Madam Chairman. I am pleased to answer any questions that Members of the Subcommittee might have. Thank you.

Attachment 3

Health and Characteristics of the Bering Sea Pollock Fishery

The Size of the Bering Sea Pollock Fishery. The Bering Sea pollock fishery, when measured by landings, is the largest fishery in the U.S. About 2.4 billion pounds of pollock is caught and processed annually by the U.S.-flag fleet, **accounting for one-quarter of all fish landed domestically**. The 30-vessel factory trawler fleet catches about half of the annual pollock quota. Trawl catcher vessels, which deliver their catch to onshore processors, floating motherships and factory trawlers, account for the other half of pollock landings. When fishing for pollock, catcher vessels and factory trawlers utilize mid-water trawling gear, that is, vessels tow a cone-shaped net behind the vessel. Not only do both sectors utilize the same type of fishing gear, National Marine Fisheries Service (NMFS) data indicate that factory trawlers and catcher vessels use comparably sized nets as well.

A Healthy Bering Sea Pollock Resource. State and federal scientists and fishery managers, members of the environmental community, and fishing industry participants agree that the pollock resource is healthy and well managed. Annual harvest quotas are set based upon safe and sustainable levels recommended by fisheries scientists. At least one federal fishery observer serves onboard every pollock catcher/processor to monitor harvest amounts and to record any incidental bycatch or discards of fish. Significantly lower levels of observer coverage are in effect for the catcher vessel fleet.

The partnership among government, the scientific community, and the fishing industry in conserving and properly managing North Pacific fishery resources has been widely recognized as one of the most successful undertakings in fisheries resource management.

Fishing Communities. The Bering Sea at-sea pollock processing fleet employs nearly 4,000 men and women. Most of the crew members are residents of the Pacific Northwest, Alaska and California seeking family wage jobs. Entry level processing workers can earn as much as $30,000 for six months work. Food processing supervisory personnel, those working on deck in the fishing operations, galley crew, and licensed officers earn significantly higher wages. In addition to the thousands of jobs in the at-sea processing sector, there is a substantial support industry for the fleet. For example, APA member vessels spend over $15 million annually in Northwest and Alaska shipyards. That is one reason that organized labor has gone on record to support maintaining a healthy and viable at-sea processing fleet.

A strong interdependence has developed in the 1990s between the at-sea

processing fleet and the fifty Western Alaska native communities that comprise the Community Development Quota (CDQ) program. At-sea processing companies have contributed over $70 million in royalty payments to the CDQ communities since 1992. In addition, hundreds of Western Alaska natives have been trained and hired to work in the at-sea fleet. Perhaps most importantly, two of the CDQ groups have invested in at-sea processing companies. Western Alaska, too remote from the pollock fishing grounds to develop shoreside harvesting and processing operations, relies on at-sea processing technology for access to the healthy and enormous Bering Sea pollock resource.

Description of At-sea Processing. Once the fish is brought onboard an at-sea processing vessel, sophisticated food processing technology and equipment is used to make *surimi*, a fish mince that is the principal ingredient in imitation crab products. The fleet also produces fillet products primarily for the domestic market. At certain times of the year, pollock roe, a highly valued commodity, is extracted. Many vessels have fish meal plants for rendering the inedible portions of the pollock and some vessels manufacture fish oil, which is burned in boilers to produce steam heat for use throughout the vessel. Processed fish products are then frozen, packaged and placed in a freezer hold onboard the vessel for the duration of the voyage.

At-sea Processors Provide a Mix of Fishery Products. Packaged products are off-loaded at Dutch Harbor in the Aleutian Islands. The *surimi* is shipped directly to Japan, Korea or other export markets with some *surimi* also sold to the U.S. market;fillet products are sent to secondary processing plants in the U.S. Of the primary pollock products, approximately 60 percent of at-sea production is *surimi*, and 40 percent fillets. Fillets are sold in the domestic market. Major customers include national food chains such as Burger King, McDonald's and Long John Silver's restaurants.